IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 36

CLIFTON WHITLEY, ET AL., *Appellants*,

v.

JOHN BELL WILLIAMS, GOVERNOR OF MISSISSIPPI, ET AL., *Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI (THREE JUDGE COURT)

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APPENDIX

Relevant Docket Entries in Proceeding Below

10-20-66—Complaint, original and six copies, filed.

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10-26-66—Answer of defendants with certificate of service—filed. Copies of answer handed to each of the 3 judges at Biloxi.

10-26-66—Per Curiam opinion—"An order accordingly may be presented.", filed.

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10-27-66—ORDER granting temporary injunction, filed and entered OB 1966, Pages 866 and 867.

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9-25-67—Stipulation as to House Bill 68, Mississippi Laws 1966, amending Section 3260; Mississippi Code 1942, filed. Copies of stipulation mailed to Judges Ainsworth, Cox & Russell.

10-13-67—Plaintiff's Notice of Motion on 10-20-67 at Jackson, Miss., with Motion for interlocutory injunction and Certificate of service with affidavit attached, filed.

10-27-67—OPINION before Ainsworth, Circuit Judge, and Cox and Russell, District Judges: "The motion for an interlocutory injunction is accordingly denied, and the complaint in its entirety is without merit and is dismissed; The judgment incorporating this per curiam opinion by reference thereto may be presented and signed by the managing judge of this Court as the order of the entire Court," filed. Copies transmitted to attorneys and three judges.

10-31-67—FINAL JUDGMENT: Plaintiffs' motion for an interlocutory injunction is denied, and the complaint herein in its entirety, be and is hereby, dismissed,

filed and entered OB 1967, Page 1022. (Copy mailed attorney Will S. Wells)

10-31-67—Plaintiffs' Notice of Appeal to the Supreme Court of the United States from Final Judgment of 10-31-67, with certificate of service, filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4025

REV. CLIFTON WHITLEY, DOCK DRUMMOND, and EMMA SANDERS, on behalf of themselves and all other persons similarly situated, *Plaintiffs*

v.

PAUL B. JOHNSON, as Governor of the State of Mississippi and Chairman of the State Board of Election Commissioners; HEBER LADNER, as Secretary of State of the State of Mississippi and Secretary of the State Board of Election Commissioners and JOE T. PATTERSON, Attorney General of the State of Mississippi and member of the State Board of Election Commissioners, *Defendants*

Complaint—Filed October 20, 1966

1. This action arises under the 14th and 15th Amendments to the Constitution of the United States and the Voting Rights Act of 1965 (Title 42 U.S.C. § 1973). It seeks to enjoin, as violative of the Constitution and laws of the United States, enforcement of Chapter 613 of the Mississippi Laws of 1966 (House Bill No. 68) purporting to amend Section 3260, Mississippi Code of 1942, insofar as said Chapter 613 seeks to make more stringent the requirements for independent candidacy in the State of Mississippi.

2. The jurisdiction of this Court is founded on Title 28 U.S.C. §§ 1331(a), 1343(3) and (4), 2201 and 2281, and on Title 42 U.S.C. §§ 1971(d), 1973(j)(f), 1981 and 1983. The matter in controversy exceeds the value of $10,000.00 exclusive of interest and costs.

3. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to Rule 23 FRCP. The persons constituting the class represented herein are so numerous as to make it impracticable to bring them all before the Court. Plaintiffs fairly insure the adequate representation of all. The character of the right sought to be enforced for the class is several; there are common questions of law and fact affecting the several rights, and a common relief is sought.

4. Plaintiffs are Negro citizens of the United States and the State of Mississippi and each is a qualified elector in the State of Mississippi. Plaintiff, Rev. Clifton Whitley, is in every respect qualified to be an independent candidate for the office of United States Senator from the State of Mississippi in the November 8, 1966 general election. He resides in Marshall County, Mississippi and on September 27, 1966, he filed a valid petition for said office with the Secretary of State of the State of Mississippi in accordance with law. His petition contained 3,540 signatures, of which 2,055 were certified as valid by the appropriate county registrars. Plaintiff Dock Drummond is in every respect qualified to be an independent candidate for the office of Representative to the United States Congress for the First Congressional District of Mississippi. He resides in Attala County, Mississippi and on September 28, 1966, he filed a valid petition for said office with the Secretary of State of the State of Mississippi in accordance with law. His petition contained 537 signatures of which 449 were certified as valid by the appropriate county registrars. Plaintiff Emma Sanders is in every respect qualified to be a candidate for the office of Representative to the United States Congress for the Third Congressional

District of Mississippi. She resides in Hinds County and on September 29, 1966, she filed a valid petition for said office with the Secretary of State of the State of Mississippi in accordance with law. Her petition contained 386 signatures of which 218 were certified as valid by the appropriate county registrars.

5. Defendant Paul B. Johnson is the Governor of the State of Mississippi and Chairman of the State Board of Election Commissioners, which Board has general overall responsibility for the conduct of all elections in the State of Mississippi.

Defendant Joe T. Patterson is the Attorney General of the State of Mississippi and a member of the State Board of Election Commissioners.

Defendant Heber Ladner is the Secretary of State of the State of Mississippi and Secretary of the State Board of Election Commissioners of the State of Mississippi.

6. On or about the 10th day of October, 1966 the defendants, acting in their official capacities, rejected the petitions filed by the plaintiffs as aforesaid on the grounds that said petitions did not comply with the provisions of said Chapter 613, and more particularly, that the petitions of the plaintiffs did not contain the number of signatures of qualified electors required by Section 3260 as it purported to have been amended by said Chapter 613. However, the defendants have admitted that each of the said petitions contained a sufficient number of valid signatures to comply with the requirements of Section 3260 if said Chapter 613 did not validly amend Section 3260.

7. Section 3260, prior to its purported amendment by said Chapter 613 provided, *inter alia*, that a petition by an independent candidate for an office elected by the state at large was required to be signed by not less than 1,000 qualified electors. Said law also provided that the petition of an independent candidate for an office elected

by the qualified electors of a congressional district must be signed by not less than 200 qualified electors. Said Chapter 613, which was passed in the Regular Session of the 1966 Mississippi Legislature and approved by the Governor on June 15, 1966, purported to change the aforesaid requirements of Section 3260 in material part as follows:

> "For an office elected by the State at large, not less than ten thousand (10,000) qualified electors; . . . for an office elected by the qualified electors of a congressional district not less than two thousand (2,000) qualified electors. . . ."

8. Nothing in Section 3260, before or after its purported Amendment by Chapter 613, prohibits a person from qualifying as an independent candidate in the general election, if he has participated as a candidate in a primary election.

9. Candidates for the offices of United States Senator and United States House of Representatives from the State of Mississippi who are nominated by the regular Democratic and Republican parties of the State of Mississippi in their respective primaries need not file any petitions in order to run in the general election. The present nominees for the aforesaid respective offices by the regular Democratic and Republican parties are white. No Negro has been nominated by the regular political parties of the State of Mississippi for the aforesaid offices since prior to 1900.

10. The present members of the State Board of Election Commissioners are white and the past members since prior to 1900 have been white. White political supremacy has prevailed in the State of Mississippi during the entire history of the State.

11. (a) The population of the State of Mississippi, as appears from the 1960 census of the United States Gov-

ernment, consists of approximately 2,178,141 persons of whom 915,743 or 42% are members of the Negro race.

(b) Upon information and belief, so effective and complete has been the program of disfranchisement of the Negro people of the State of Mississippi that as of November of 1964, the date of the last general election of federal elective officials, less than 7% of eligible Negroes were registered to vote in the State. Upon information and belief, at the same time, over 60% of the eligible whites were registered to vote in the State of Mississippi.

12. On numerous occasions in the past 10 years the United States District Courts in the State of Mississippi and the United States Court of Appeals for the Fifth Circuit have entered decrees and judgments based on findings of long-standing patterns and practices of racial discrimination in connection with voting in various counties of the State of Mississippi.

13. As of July 1, 1966, approximately 34% of the eligible Negroes were registered to vote in the State of Mississippi. Thus, for the first time in this century, a substantial proportion of the Negro electorate is in a position to vote in a general election of federal elective officials.

14. The defendants acting pursuant to said Chapter 613, have refused to permit the plaintiffs to qualify and run for their respective offices in the general election for 1966.

15. The purpose and effect of the adoption of said Chapter 613 is to abridge, on account of race or color, the right of the plaintiffs to run as independent candidates in the November, 1966 general election and in elections thereafter, and further to abridge, on account of race or color, the right of Negroes in the State of Mississippi to vote for the candidates of their choice.

16. The State of Mississippi is one of the areas covered by the provisions and requirements of the Voting Rights Act of 1965. Neither the State of Mississippi nor any

of its officials or agents has instituted any action in the United States District Court for the District of Columbia for declaratory judgment that said Chapter 613 does not have the purpose and will not have the effect of denying or abridging the right to vote, on account of race or color; nor have they submitted said Chapter 613 to the Attorney General of the United States in accordance with the requirements of Section 5 of the Voting Rights Act of 1965.

17. The said Chapter 613, and the effect given to it by the defendants, violates 42 U.S.C. § 1971(a), Section 5 of the Voting Rights Act of 1965 and the 14th and 15th Amendments to the Constitution of the United States.

18. The further effect of said Chapter 613 is to "freeze" Negroes out of the electorate and therefore violates the 15th Amendment to the United States Constitution.

19. The purpose and effect of said Chapter 613 is to perpetuate the white political supremacy that has prevailed in the State of Mississippi since prior to 1900.

20. Unless restrained by order of this Court, defendants will continue to give effect to said Chapter 613 and will fail and refuse to accept the qualified petitions of the plaintiffs for the forthcoming general election on November 8, 1966, and the plaintiffs will be irreparably injured.

21. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein, and this suit for a preliminary and permanent injunction is their only means of securing adequate relief.

WHEREFORE, plaintiffs pray:

1. That pursuant to the provisions of 28 U.S.C. § 2281, a district court of three judges be convened in accordance with the procedures set forth in 28 U.S.C. § 2284;

2. That this Court adjudge and declare said Chapter 613 to be in violation of 42 U.S.C. § 1971(a), Section 5 of the Voting Rights Act of 1965 and the 14th and 15th Amendments to the Constitution of the United States;

3. That this Court issue a preliminary and permanent injunction enjoining the defendants, their agents, employees, successors and all persons in active concert and participation with them from:

(a) enforcing or otherwise giving any legal effect to Chapter 613;

(b) failing or refusing to accept the petition as independent candidates, of the plaintiffs, and all others similarly situated for their respective offices in the November 8, 1966 general election;

(c) failing or refusing to include the names of the plaintiffs, and all other similarly situated as candidates who qualify on the official ballots for said general election on November 8, 1966.

4. That pending the hearing and determination of the complaint herein and the request for relief thereunder, a temporary injunction issue enjoining and restricting the defendants, each of them, their agents, representatives and attorneys, and all others acting in concert with them from proceeding in any way with or from holding the general elections now scheduled for November 8, 1966;

5. That this Court grant such additional relief as justice may require together with the costs and disbursements of this action.

Respectfully submitted,

s/ R. Jess Brown
R. Jess Brown
Alvin J. Bronstein
Malcolm Farmer III
Lawyers Constitutional
Defense Committee
603 N. Farish St.
Jackson, Mississippi

Attorneys for Plaintiffs

Of Counsel:
John L. Saltonstall, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

CIVIL ACTION No. 4025

REV. CLIFTON WHITLEY, ET AL., *Plaintiffs*,

v.

PAUL B. JOHNSON, ET AL., *Defendants*.

Answer of Defendants—Filed October 26, 1966

The Defendants, Paul B. Johnson, Governor of the State of Mississippi and Chairman of the State Board of Election Commissioners; Heber Ladner, Secretary of State of Mississippi and Secretary of the State Board of Election Commissioners; and Joe T. Patterson, Attorney General of Mississippi and a member of the Board of Election Commissioners, by their attorney, file herewith their answer to the Complaint filed against them in this action:

FIRST DEFENSE

Defendants deny that this Court has jurisdiction of the parties or the subject matter of this action.

SECOND DEFENSE

Defendants deny the allegations of Paragraph 1 and 2 of the Complaint.

Defendants deny that persons constituting the class purport to be represented by Plaintiffs are so numerous as to make it impracticable to bring them all before the Court. The named Plaintiffs constitute the entire class.

Defendants admit that Plaintiffs are Negro citizens of the United States and the State of Mississippi, and that each is a qualified elector in the State of Mississippi. They deny that Plaintiff Whitley is in every respect qualified to

be an independent candidate for the office of United States Senator from the State of Mississippi in the November 8, 1966 general election. They admit that he resides in Marshall County, Mississippi, and that on September 27, 1966, he filed a petition with the Secretary of State to have his name printed on the ballot as a candidate for United States Senator. They admit that his petition contained 3,540 signatures of which 2,055 were certified by county registrars as being qualified electors in Mississippi. They deny that his petition was a valid petition. They deny that Dock Drummond is in every respect qualified to be an independent candidate for the office of Representative to The United States Congress from the First Congressional District of Mississippi. They admit that he resides in Attala County, Mississippi; that on September 28, 1966, he filed a petition with the Secretary of State seeking to have his name placed on the ballot in the November 8, 1966 general election as an independent candidate for Congress. They admit that his Petition contained 537 signatures and that 445 names appearing thereon were certified by county registrars as being qualified electors. They deny that his petition was a valid petition in accordance with law. Defendants deny that Plaintiff Sanders is in every respect qualified to be a candidate for the office of Representative of The United States Congress from the Third Congressional District of Mississippi. They admit that she resides in Hinds County and that on September 29, 1966, she filed a petition with the office of the Secretary of State seeking to have her name placed on the ballot as a candidate for Congress. They admit that this petition contained 386 names and that 218 of these names were certified by the registrar of Hinds County as being qualified electors. They deny that her petition was a valid petition in accordance with law.

Defendants admit the allegations of Paragraph 5 of the Complaint, except that they deny that the State Board of Election Commissioners has the general over-all responsibility for the conduct of all the elections in the State of Mississippi.

Defendants admit that on or about the 10th day of October, 1966, the Defendants, acting in their official capacities, rejected the petitions filed by Plaintiffs, but deny that the sole and only grounds were that the same did not comply with the provisions of Section 3260 as amended by Chapter 613 of the Laws of 1966 of the regular session of the Mississippi Legislature. They would show unto the Court that the petitions of Plaintiffs Whitley and Drummond were also rejected because they each had been candidates in the Democratic Primary Election held on June 7, 1966, for the same offices and were defeated in that primary election.

Defendants admit the allegations of Paragraph 7 of the Complaint.

Defendants deny the allegations of Paragraph 8 of the Complaint, and allege that the Supreme Court of Mississippi, interpreting Section 3260, when read in conjunction with other sections governing elections, has declared that any person running as a candidate in a primary election and defeated in that election may not thereafter have his name placed on the ballot as an independent candidate for that same office by petition.

Defendants admit the allegations of Paragraph 9 of the Complaint.

Defendants admit that the present members of the State Board of Election Commissioners are White and that past members, since sometime prior to 1900, have been White. They deny that White political supremacy has prevailed in Mississippi during the entire history of the State of Mississippi.

Defendants are without information sufficient to form a belief as to the truth of the averment of Paragraph 11 of the Complaint, but allege that the official census of 1960 taken by the United States Government speaks for itself. They are without information sufficient to form a belief as to the truth of the averment of Paragraph 11(b) of the Complaint.

Defendants admit that during the past several years, judgments have been entered in the District Courts of The United States in Mississippi and in the Court of Appeals for the Fifth Circuit granting injunctions against certain county registrars upon findings of discrimination in accordance with a pattern or practice.

Defendants are without information sufficient to form a belief as to the truth of the averments of Paragraph 13 of the Complaint.

Defendants admit that acting pursuant to Section 3260 of the Mississippi Code as amended and for other reasons, Defendants have refused to place the names of the named Plaintiffs on the ballot for the general election of November 8, 1966, as independent candidates for the offices they seek.

Defendants deny the allegations of Paragraph 15 of the Complaint.

Defendants admit the allegations of Paragraph 16 of the Complaint, but deny that Section 3260, as amended, is such as requires the institution of any action in the United States District Court for the District of Columbia under Section 5 of the Voting Rights Act of 1965.

Defendants deny the allegation of Paragraph 17 of the Complaint.

Defendants deny the allegations of Paragraph 18 of the Complaint.

Defendants deny the allegations of Paragraph 19 of the Complaint.

Defendants admit that they will continue to give effect to Section 3260 as amended by Chapter 613 of the Laws of 1966, but deny that Plaintiffs will be irreparably injured.

Defendants deny that Plaintiffs have no plain, adequate or complete remedy at law to redress their alleged wrongs and allege that they do have a remedy in the State Courts of Mississippi.

THIRD DEFENSE

Defendants allege that the time for election of the State Senators and Representatives from Mississippi to the United States Congress is fixed by Federal statute, Title 2, Section 1 and 7 of the United States Code and that this Court is without jurisdiction, or, in the alternative, that it would be inappropriate for this Court to enjoin the holding of the general elections now scheduled for November 8, 1966, in the absence of an opportunity for The United States, acting through the Department of Justice, to appear as a Defendant in this action.

FOURTH DEFENSE

Defendants allege that this action falls in the category covered by Title 28, Section 1344, and being limited to an election for United States Senator and Representative in Congress, this Court is without jurisdiction to grant the relief sought by Plaintiffs.

PAUL B. JOHNSON, Governor of the State of Mississippi,

HEBER LADNER, Secretary of State of Mississippi,

JOE T. PATTERSON, Attorney General of the State of Mississippi

Defendants

JOE T. PATTERSON, Attorney General of the State of Mississippi,

WILL S. WELLS, Assistant Attorney General of the State of Mississippi

Attorneys for Defendants

By: WILL S. WELLS
Will S. Wells

Of Counsel for Defendants

(Certificate of Service omitted in printing)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4025

CLIFTON WHITLEY, ET AL., *Plaintiffs*,

v.

PAUL B. JOHNSON, GOVERNOR OF MISSISSIPPI, ET AL.,
Defendants.

Opinion of the District Court—Filed October 26, 1966

The plaintiffs in this case are three negro citizens of Mississippi who seek injunctive relief against the defendants as the Board of Election Commissioners of Mississippi to restrain their application and use of House Bill 68, Mississippi Laws 1966 to these plaintiffs to prevent them from appearing on the ballot as candidates for the office of United States Senator and United States House of Representatives in the general election on November 8, 1966. It is contended that this legislative enactment is violative of § 5 of the Civil Rights Act of 1965 and that the Fifteenth Amendment rights of these plaintiffs will be violated by a refusal to place their names as candidates on such ballot. The defendants declined to place the names of these proposed candidates on such ballot because two of them had run and had been defeated as Democratic candidates for such offices in the June 1966 primary election in Mississippi and that they were thus disqualified to run again as independent candidates for the same office at the succeeding general election. The defendants likewise refused to place the names of the plaintiffs on the ballot at the coming November 1966 general election because their petitions or applications to the Board of Election Commissioners did not contain the requisite number of signatures of qualified electors under House Bill 68, Mississippi Laws 1966 to entitle them to a place on said ballot.

Finding of Facts

This case was presented to the Court on the pleadings, affidavit of one witness and documentary evidence in support of this application by the plaintiffs for an interlocutory or temporary injunction. The plaintiffs' application to the Board of Election Commissioners contained the signatures of the requisite number of qualified electors to entitle each of the plaintiffs to have his and her name placed on the ballot as a candidate for the office of United States Senator and as candidates for the office of United States House of Representatives under the requirements of § 3260, prior to the passage of House Bill 68, Mississippi Laws 1966. No adjudication was sought or obtained as to whether or not said House Bill 68, Mississippi Laws 1966 denied or abridged any right to vote on account of race or color as provided by 42 U.S.C.A. § 1973c. This suit has been expeditiously processed and heard on the eve of such general election as quickly as was reasonably possible under existing circumstances and conditions. This is an extremely important suit to all parties affected and concerned and involves some very far reaching and intricate and complicated questions of law and fact which should not be resolved in haste at the risk of impinging upon important rights of all parties in this case. It appears to this Court that the granting of the relief herein awarded would not be as hurtful to the ultimate rights of the defendants as a denial of such relief would be hurtful to the ultimate rights of the plaintiffs if a contrary conclusion were ultimately reached.

Conclusions of Law

This Court has full equity jurisdiction of this suit under 42 U.S.C.A. § 1973c. The Court has the power to fashion its judgment to effectually suspend the application of House Bill 68, Mississippi Laws 1966 as to these plaintiffs in an effort to avoid undue harm and injury to either party to this suit; and to order the defendants to forthwith place

the names of the plaintiffs as candidates for said national offices on the ballot to be used by the electors at the November 8, 1966 general election in Mississippi without regard to said House Bill 68, Mississippi Laws 1966; and the defendants will be ordered and directed to activate and implement such order of this Court to the end that all qualified electors may have an opportunity to cast their vote for the plaintiffs as candidates for said offices at said election if they wish to vote for them t'. efor. The judgment of the Court incorporating this per curiam opinion by reference thereto may be presented to and signed by any one of the judges of this Court as the order of the entire Court. An order accordingly may be presented.

s/ ROBERT A. AINSWORTH, JR.
United States Circuit Judge

s/ HAROLD COX
United States District Judge

s/ DAN M. RUSSELL, JR.
United States District Judge

October 26, 1966

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4025

CLIFTON WHITLEY, ET AL., *Plaintiffs*,

v.

PAUL B. JOHNSON, GOVERNOR OF MISSISSIPPI, ET AL.,
Defendants.

Order Granting Temporary Injunction—Filed October 27, 1966

Pursuant to findings and conclusions herein dated October 26, 1966, and made a part hereof by reference thereto;

IT IS ORDERED, ADJUDGED AND DECREED by the Court: That the defendants, as members of the State Board of Election

Commissioners of the State of Mississippi, are ordered and directed to place on the ballot to be used at the general election in the State of Mississippi on November 8, 1966, the name of Clifton Whitley as an independent candidate for the office of United States Senator, Dock Drummond as an independent candidate for the office of United States Representative for the First Congressional District of Mississippi and Emma Sanders as an independent candidate for the office of United States Representative for the Third Congressional District of Mississippi, upon said plaintiffs posting a bond herein in the penalty of five hundred dollars, conditioned according to law to be approved by the Clerk of this Court. No process need issue pursuant to ths order, but after said bond is posted and approved, an attested copy of this order shall be served by the United States Marshal upon the Attorney General of Mississippi as counsel for the defendants as due and sufficient notice hereof.

ORDERED, ADJUDGED AND DECREED, this October 27, A.D., 1966.

HAROLD COX
United States District Judge

(Jurat omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4025

CLIFTON WHITLEY, ET AL., *Plaintiffs*

v.

PAUL B. JOHNSON, ET AL., *Defendants*

Motion for Interlocutory Injunction—Filed October 13, 1967

Upon the pleadings and stipulation filed herein and the affidavits attached hereto, the plaintiffs move this honorable Court for an interlocutory injunction enjoining the de-

fendants, their agents, employees, representatives, successors, appointees and all persons acting in concert with them, pending the final hearing and determination of this action from:

(1) enforcing or otherwise giving any legal effect to House Bill 68 of the Mississippi Laws of 1966, purporting to amend Section 3260, Mississippi Code of 1942;

(2) failing or refusing to accept the petitions as Independent candidates, of Rev. Sammy Rash, Philip McKinney, Dan Lofton Mason, L. C. Leach, Rev. J. L. Brown, Johnnie Ross, John Daniel Wesley, George Raymond, Bennie L. Thompson, Ellis Saddler, Floyd Moore, H. L. Gray Sr., Hubert McDonald, Rev. L. C. Coleman, Mrs. Fannie Lou Hamer, and Harold T. Magee, all being members of the class of plaintiffs, and all others similarly situated, for their respective intended offices in the November 7, 1967 general election;

(3) failing or refusing to include the names of the above mentioned class plaintiffs, and all others similarly situated, as candidates who qualify on the official ballots for said general election on November 7, 1967;

(4) in the alternative, proceeding in any way with or from holding the general elections now scheduled for November 7, 1967 until the plaintiffs' request for other relief as stated above is heard and determined.

Plaintiffs further move this honorable Court:

(5) to convene for the purpose of hearing and determining this application for an interlocutory injunction, a court of three judges in accordance with the provisions of Title 28 U.S.C. § 2284, on the grounds that:

(a) unless enjoined by this honorable Court, the defendants will perform or fail to perform as the case may be, the acts referred to above, and

(b) such action by the defendants will result in irreparable injury, loss and damage to the plaintiffs as more particularly appears in the verified complaint, stipulation and affidavits attached hereto.

Respectfully submitted,

ALVIN J. BRONSTEIN
Alvin J. Bronstein
603 N. Farish St.
Jackson, Mississippi
Attorney for Plaintiffs

[Certificate of service omitted in printing]

State of Mississippi
County of Bolivar

AFFIDAVIT

Rev. Sammy Rash being duly sworn deposes and says:

1. That I am a Negro citizen of Bolivar County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of State Representative in District 16, Post 2, Bolivar County in the November 1967 general election by filing a petition with the Bolivar County Election Commission;

3. I was thereafter advised by the Bolivar County Election Commission that I had been disqualified or challenged because I failed to list the Post number on my petition although same appeared on the subversive affidavit that I was required to file, and that my name would not be placed on the ballot in the November 7, 1967 general election;

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the

Mississippi Code of 1942 prior to its amendment in 1966 or that I would have had sufficient time under the old law to correct my petition if it was necessary.

REV. SAMMIE RASH

Sworn to and subscribed before me
this 9 day of October, 1967.

THOMAS H. MOORE
Notary Public

My commission expires: August 8, 1970

State of Mississippi
County of Madison

AFFIDAVIT

George Raymond, Jr., being duly sworn deposes and says:

1. That I am a Negro citizen of Madison County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of State Representative, District 29, Madison County, Post 1 in the November 1967 general election by filing a petition with the Madison County Election Commission;

3. That I was thereafter advised by the Madison County Election Commission that I had been disqualified or challenged because my petition contained insufficient signatures, some of the signatures did not list the precincts and all of the signatures were not signed personally by the electors, and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260

of the Mississippi Code of 1942, prior to its amendment in 1966.

GEORGE RAYMOND, JR.

Sworn to and subscribed before me
this 9th day of October, 1967.

H. A. JONES
Notary Public

My commission expires: March 11, 1968

State of Mississippi
County of Pike

AFFIDAVIT

Harold T. Magee, being duly sworn, deposes and says:

1. That I am a Negro citizen of Pike County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Constable, Beat 1, Pike County, in the November 1967 general election by filing a petition with the Pike County Election Commission;

3. I was thereafter advised by the Pike County Election Commission that I had been disqualified or challenged because I had voted in the August 1967 Democratic Primary and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

HAROLD T. MAGEE

Sworn to and subscribed before me
this 7 day of October, 1967.

JOHN M. MCCRAY, SR.
Notary Public

My commission expires: June 23rd 1969

State of Mississippi
County of Hinds

AFFIDAVIT

L. C. Leach, being duly sworn, deposes and says:

1. That I am a Negro citizen of Hinds County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Justice of the Peace, Beat 2, Post 1, Hinds County, in the November 1967 general election by filing a petition with the Hinds County Election Commission;

3. I was thereafter advised by the Hinds County Election Commission that I had been disqualified or challenged because I had voted in the August 1967 Democratic Primary and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

L. C. Leach

Sworn to and subscribed before me
this 9 day of October 1967.

Sarah Harvey Stevens
Notary Public

My Commission Expires May 9, 1970.

State of Mississippi
County of Quitman

AFFIDAVIT

Rev. L. C. Coleman being duly sworn deposes and says:

1. That I am a Negro citizen of Quitman County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Supervisor, Beat 3, Quitman County, in the November 1967 general election by delivering my petition to the Circuit Clerk of Quitman County to have him certify the signatures.

3. That I was thereafter advised by the Circuit Clerk of Quitman County that I did not have to file a petition with anyone in order to run as an Independent candidate and I therefore did not file my petition with the Quitman County Election Commission prior to the cutoff date and I am advised that my name will not be placed on the ballot in the November 7, 1967 general election;

4. I am informed and believe that I would have had sufficient time to file my petition in accordance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966, after I learned that the information given me by the Circuit Clerk was incorrect.

REV. L. C. COLEMAN

Sworn to and subscribed before me
this 9 day of October, 1967.

MARIE W. EAVENSON, *Circuit Clerk*
Notary Public

My commission expires: January 1, 1967

State of Mississippi
County of Hinds

AFFIDAVIT

Hubert McDonald, being duly sworn deposes and says:

1. That I am a Negro citizen of Madison County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Constable, Beat 3, Post 2, Madison County, in the November 1967 general election by filing a petition with the Madison County Election Commission;

3. That I was thereafter advised by the Madison County Election Commission that I had been disqualified or challenged because my petition contained insufficient signatures, some of the signatures did not list the precincts and all of the signatures were not signed personally by the electors, and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

HUBERT McDONALD

Sworn to and subscribed before me
this 7th day of October, 1967.

SARAH HARVEY STEVENS
Notary Public

My commission expires: May 9, 1970

State of Mississippi
County of Hinds

AFFIDAVIT

Dan Lofton Mason, being duly sworn, deposes and says:

1. That I am a Negro citizen of Hinds County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Supervisor, Beat 2, Hinds County, in the November 1967 general election by filing a petition with the Hinds County Election Commission;

3. I was thereafter advised by the Hinds County Election Commission that I had been disqualified or challenged because I had voted in the August 1967 Democratic Primary and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

DAN LOFTON MASON

Sworn to and subscribed before me
this 7th day of October, 1967.

SARAH HARVEY STEVENS
Notary Public

My commission expires: May 9, 1970

State of Mississippi
County of Hinds

AFFIDAVIT

Bennie L. Thompson, being duly sworn deposes and says:

1. That I am a Negro citizen of Madison County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Supervisor, Beat 3, Madison County, in the November 1967 general election by filing a petition with the Madison County Election Commission;

3. That I was thereafter advised by the Madison County Election Commission that I had been disqualified or challenged because my petition contained insufficient signatures, some of the signatures did not list the precincts and all of the signatures were not signed personally by the electors, and that my name would not be placed on the ballot in the November 7, 1967 general election.

2. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

BENNIE L. THOMPSON

Sworn to and subscribed before me
this 7th day of October, 1967.

SARAH HARVEY STEVENS
Notary Public

My commission expires: May 9, 1970

State of Mississippi
County of Hinds

AFFIDAVIT

Floyd Moore, being duly sworn deposes and says:

1. That I am a Negro citizen of Madison County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Justice of the Peace, Beat 3, Post 2, Madison County, in the November 1967 general election by filing a petition with the Madison County Election Commission;

3. That I was thereafter advised by the Madison County Election Commission that I had been disqualified or challenged because my petition contained insufficient signatures, some of the signatures did not list the precincts and all of the signatures were not signed personally by the electors, and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

FLOYD MOORE

Sworn to and subscribed before me
this 13th day of October, 1967.

SARAH HARVEY STEVENS
Notary Public

My commission expires: May 9, 1970

State of Mississippi
County of Hinds

AFFIDAVIT

Johnnie Ross, being duly sworn, deposes and says:

1. That I am a Negro citizen of Hinds County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Justice of the Peace, Beat 3, Hinds County, in the November 1967 general election by filing a petition with the Hinds County Election Commission;

3. I was thereafter advised by the Hinds County Election Commission that I had been disqualified or challenged because I had voted in the August 1967 Democratic Primary and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

JOHNNY ROSS

Sworn to and subscribed before me
this 13th day of October, 1967.

SARAH HARVEY STEVENS
Notary Public

My commission expires: May 9, 1970

State of Mississippi
County of Hinds

AFFIDAVIT

Rev. J. L. Brown, being duly sworn, deposes and says:

1. That I am a Negro citizen of Hinds County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Supervisor, Beat 3, Hinds County, in the November 1967 general election by filing a petition with the Hinds County Election Commission;

3. I was thereafter advised by the Hinds County Election Commission that I had been disqualified or challenged because I had voted in the August 1967 Democratic Primary and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

REV. J. L. BROWN

Sworn to and subscribed before me
this 13 day of October, 1967.

SARAH HARVEY STEVENS
Notary Public

My commission expires: May 9, 1970

State of Mississippi
County of Hinds

AFFIDAVIT

H. L. Gray, Sr., being duly sworn deposes and says:

1. That I am a Negro citizen of Madison County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Constable, Beat 3, Post 1, Madison County, in the November 1967 general election by filing a petition with the Madison County Election Commission;

3. That I was thereafter advised by the Madison County Election Commission that I had been disqualified or challenged because my petition contained insufficient signatures, some of the signatures did not list the precincts and all of the signatures were not signed personally by the electors, and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

H. L. Gray, Sr.

Sworn to and subscribed before me
this 13 day of October, 1967.

Sarah Harvey Stevens
Notary Public

My commission expires: May 9, 1970

State of Mississippi
County of Hinds

AFFIDAVIT

Ellis Saddler, being duly sworn deposes and says:

1. That I am a Negro citizen of Madison County, Mississippi;

2. That I attempted to qualify as an Independent candidate for the office of Justice of the Peace, Beat 3, Post 1, Madison County in the November 1967 general election by filing a petition with the Madison County Election Commission;

3. That I was thereafter advised by the Madison County Election Commission that I had been disqualified or challenged because my petition contained insufficient signatures, some of the signatures did not list the precincts and all of the signatures were not signed personally by the electors, and that my name would not be placed on the ballot in the November 7, 1967 general election.

4. I am informed and believe that my petition would have been proper and in compliance with Section 3260 of the Mississippi Code of 1942, prior to its amendment in 1966.

ELLIS SADDLER.

Sworn to and subscribed before me
this 13 day of October, 1967.

SARAH HARVEY STEVENS
Notary Public

My commission expires: May 9, 1970

State of Mississippi
County of Hinds

AFFIDAVIT

Alvin J. Bronstein being duly sworn deposes and says:

1. That I am a member of the bar of this Court and the attorney of record for the plaintiffs in this action.

2. That I recite all the foregoing facts upon information and belief:

a. That John Daniel Wesley is a Negro citizen of Holmes County, Mississippi; that he attempted to qualify as an Independent candidate for the office of Justice of the Peace, Beat 5, Holmes County in the November 1967 general election by filing a petition with the Holmes County Election Commission; that he has been advised that he may be disqualified because he voted in the August 1967 Democratic Primary and that his name may not be placed on the ballot in the November 7, 1967 general election;

b. That Mrs. Fannie Lou Hamer is a Negro citizen of Sunflower County, Mississippi; that she attempted to qualify as an Independent candidate for the office of State Senator, District 17, Sunflower County, in the November 1967 general election by filing a petition with the Sunflower County Election Commission; that she has been advised that she has been disqualified by said election commission because she voted in the August 1967 Democratic Primary and that her name will not be placed on the ballot in the November 7, 1967 general election.

c. That Philip McKinney is a Negro citizen of DeSoto County, Mississippi; that he attempted to qualify as an Independent candidate for the office of Supervisor, Beat 4, DeSoto County in the November 1967 general election by filing a petition with the DeSoto County Election Commission; that he was advised that his petition was filed too late and that his name would not be listed on the ballot in the November 7, 1967 general election.

3. That I am informed and believe that each of the above petitions would have been proper and in compliance with Section 3260, Mississippi Code of 1942, prior to its amendment in 1966.

ALVIN J. BRONSTEIN

Sworn to and subscribed before me
this 13th day of October, 1967.

SARAH HARVEY STEVENS
Notary Public

My commission expires: May 9, 1970

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4025

CLIFTON WHITLEY, ET AL., *Plaintiffs*

versus

PAUL B. JOHNSON, Governor of the State of Mississippi, ET AL., *Defendants*

Opinion of the District Court—Filed October 27, 1967

Before AINSWORTH, Circuit Judge, and COX and RUSSELL, District Judges.

BY THE COURT:

The parties to this suit have stipulated: "That the only issue before the Court at this time is whether or not House Bill 68, Mississippi Laws 1966, which amended Secton 3260 of the Mississippi Code of 1942, is an attempt by the State of Mississippi *to enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in*

force or effect on November 1, 1964; (language of 42 U.S.C. 1973c)." (See Stipulation, dated September 25, 1967, attached as Appendix A.)

This complaint was filed on October 20, 1966 by three named plaintiffs, Reverend Clifton Whitley, Dock Drummond and Emma Sanders, on behalf of themselves and all other persons similarly situated, as a class action pursuant to Rule 23, Federal Rules of Civil Procedure. In the complaint plaintiffs prayed that this Court adjudge and declare House Bill 68, Mississsippi Laws 1966 (sometimes referred to as Chapter 613 of the Mississippi Laws of 1966), which amended Section 3260 of the Mississippi Code of 1942, to be in violation of Section 5 of the Voting Rights Act of 1965 and the Fourteenth and Fifteenth Amendments of the United States Constitution; that a preliminary and permanent injunction issue enjoining defendants from enforcing Chapter 613, from failing to accept the petitions of the named plaintiffs as independent candidates in the November 8, 1966 Mississippi general election, and from failing or refusing to include the names of plaintiffs, and all others similarly situated, as candidates who qualify on the official ballots for the November 8, 1966 general election.

A three-judge District Court was requested and thereafter convened for a hearing at Biloxi, Mississippi, on October 26, 1966. The Court, under its full equity jurisdiction, suspended the application of House Bill 68, Mississippi Laws 1966, and ordered that the names of the plaintiffs who were candidates for national office be placed on the ballot to be used by the electors at the general election in Mississippi on November 8, 1966. The Court did not pass on the question whether House Bill 68 denies or abridges any right to vote on account of race or color as provided by 42 U.S.C. § 1973c.

Subsequently, counsel for complainants requested that we set this case for hearing on the merits, and a Stipulation was entered into September 25, 1967 between counsel for

complainants and defendants which has been filed herewith in the record and is submitted to eliminate the need for further hearings in this case.[1] Plaintiffs submitted their brief on October 6, 1967 and defendants' reply brief was received on October 18, 1967. Plaintiffs seek a prompt decision on behalf of the class of plaintiffs who have attempted to qualify and run as independent candidates in the impending Mississippi general election on November 7, 1967. The matter, therefore, is before us on the merits for final decision.

House Bill 68, Mississippi Laws 1966, amended the existing Mississippi law by making four changes from the original statute as follows: (1) No person who has voted in a primary election may thereafter be placed on the ballot as an independent candidate in the general election; (2) the numbers of signatures of qualified electors needed on the petition of an independent candidate have been increased; (3) each qualified elector must personally sign the petition for an independent candidate and include his polling precinct and county; and (4) the time for filing as an independent candidate is substantially earlier. All such amendatory sections apply equally to white and Negro candidates.[2]

According to the Stipulation, it is clear that the State of Mississippi is a State with respect to which the prohibitions set forth in 42 U.S.C. § 1973b(a) (Voting Rights Act of 1965) are in effect and is, therefore, subject to the provisions of 42 U.S.C. § 1973c (Section 5, Voting Rights Act of 1965) and that said State was affected by the aforesaid provisions on June 11, 1966 (when House Bill 68, Mississippi

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[1] See letter dated September 25, 1967 to counsel for plaintiffs to the members of this Court reproduced as Appendix B.

[2] In 1927, the Supreme Court of Mississippi interpreted this statute which was then Section 3717, Mississippi Code of 1906, in *Buhr* v. *Cowan*, 112 So. 386. After amendments, the statute became Section 3260, Mississippi Code of 1942. Following a ruling of the Court in *Bowen* v. *Williams*, 117 So. 2d 710, the 1966 amendment followed.

Laws 1966, was enacted) and continuously to this date. It is also true that the State of Mississippi in enacting House Bill 68, Mississippi Laws 1966, did not comply with the provisions of 42 U.S.C. § 1973c (Section 5, Voting Rights Act of 1965) in that it did not submit said statute either to the United States District Court for the District of Columbia for a declaratory judgment, that such enactment does not have the purpose and will not deny or abridge the right to vote on account of race or color, or to the Attorney General of the United States for his approval or objection. The Court notes that 42 U.S.C. § 1973c (Section 5, Voting Rights Act of 1965) is concerned with enactments by a state with respect to which the prohibitions set forth in § 1973b(a) are in effect, and in order to enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or in effect on November 1, 1964, such state must institute the declaratory action in the United States District Court for the District of Columbia or submit the matter for approval or rejection to the Attorney General of the United States.

The Mississippi statute under consideration (House Bill 68) is directed solely to the qualifications of candidates, whereas Section 5 has reference to the qualifications of voters. We do not believe that the Mississippi statute is of the kind which Section 5 of the Voting Rights Act of 1965 was designed to prevent. The Mississippi statute under attack does not appear on its face to be one designed or intended to effect a discrimination or qualification relating to the person or voting rights of the individual. The Act does not deal with voting but deals with elections, and more particularly the candidates; therefore, it does not impinge upon Section 5 of the Voting Rights Act of 1965.

The State of Mississippi, prior to this Act, suspended its enforcement of statutory voter qualifications, including tests of literacy, and the Court takes judicial notice of the fact that over 160,000 Negroes have qualified to vote since

1963. Cases cited in plaintiffs' brief have been noted, and none show the application of Section 5 of the Voting Rights Act of 1965 to the kind of statute here involved. The legislative history of the Act is indicated in both plaintiffs' and defendants' briefs, citing portions of a hearing before the Judiciary Committee of the Senate. These exchanges between Attorney General Katzenbach and the senators are confined to questions involving qualifications of voters. On the 1966 motion in this case, the Court took jurisdiction under 42 U.S.C.A. § 1983 and § 1973c but made no application of § 1973c to the ruling therein. It declines to do so here.

The Court judicially knows (from all but seven counties in Mississippi in which the information was not available) that sixty-seven Negroes did qualify as candidates in the Democratic primary elections of 1967 and seventeen were nominated for the general election.

The motion for an interlocutory injunction is accordingly denied, and the complaint in its entirety is without merit and is dismissed.

The judgment incorporating this per curiam opinion by reference thereto may be presented and signed by the managing judge of this Court as the order of the entire Court.

ROBERT A. AINSWORTH, JR.
United States Circuit Judge

WILLIAM HAROLD COX
United States District Judge

DAN M. RUSSELL, JR.
United States District Judge

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4025

CLIFTON WHITLEY, ET AL., *Plaintiffs*

v.

PAUL B. JOHNSON, Governor of the State of Mississippi, ET AL., *Defendants*

Stipulation—Filed September 25, 1967

It is hereby stipulated and agreed by and between the attorneys for all of the parties as follows:

1. That the state of Mississippi is a State with respect to which the prohibitions set forth in 42 U.S.C. § 1973b(a) (Voting Rights Act of 1965) are in effect and is therefore subject to the provisions of 42 U.S.C. § 1973c (Section 5, Voting Rights Act of 1965). The State of Mississippi was affected by the aforesaid prohibitions and subject to the aforesaid provisions on June 11, 1966 and continuously to this date;

2. That the State of Mississippi, in enacting House Bill 68, Mississippi Laws 1966, which amended Section 3260 of the Mississippi Code of 1942, did not comply with the provisions of 42 U.S.C. § 1973c (Section 5, Voting Rights Act of 1965) in that the State of Mississippi did not submit said statute *either* to the United States District Court for the District of Columbia for a declaratory judgment *or* to the Attorney General of the United States for his approval or objection. This is not to be construed as a concession by the defendants that the State of Mississippi was under any lawful obligation to so comply with the provisions of 42 U.S.C. § 1973c;

3. That one or more Negro independent candidates for political office in the Mississippi general election scheduled for November 7, 1967 has or have been challenged and disqualified from having his or their names placed on the ballot in said election by virtue of having certain provisions of House Bill 68, Mississippi Laws 1966, which amended Section 3260, Mississippi Code of 1942, applied to him or them. In particular, the following provisions of said statute have been applied to one or more of said Negro independent candidates who attempted to so qualify:

> "No person who has voted in a primary election shall thereafter have his name placed upon the ballot as an independent candidate for any office to be determined by the general election . . .".

4. That some of the aforesaid Negro independent candidates who have been so challenged or disqualified are members of the class of plaintiffs described in the complaint herein;

5. That the only issue before the Court at this time is whether or not House Bill 68, Mississippi Laws 1966, which amended Section 3260 of the Mississippi Code of 1942, is an attempt by the State of Mississippi *to enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting different from that in force or effect on November 1, 1964;* (language of 42 U.S.C. 1973c).

6. That this stipulation shall be filed with the Court.

Dated: September 25, 1967

ALVIN J. BRONSTEIN
Attorney for Plaintiffs

Dated: September 25, 1967

WILL S. WELLS
Attorney for Defendants

APPENDIX B

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, CHIEF STAFF COUNSEL

September 25, 1967

Hon. Robert A. Ainsworth, Jr.
United States Court of Appeals
400 Royal Street
New Orleans, Louisiana

Hon. W. Harold Cox
P. O. Box 2447
Jackson, Mississippi

Hon. Dan M. Russell, Jr.
P. O. Box 1930
Gulfport, Mississippi

Re: Whitley v. Johnson
Civil Action No. 4025(J)

To the Judges of this Honorable Court:

Mr. Wells, on behalf of the defendants, and myself have finally entered into a stipulation in the above cause. We have today filed the original and three copies of same with the Clerk in Jackson, but I am enclosing additional copies herewith so that the Court may see that we have stipulated both as to all of the facts as well as to the sole issue we believe to be before the Court at this time.

Since all of the parties would hope to obtain a ruling from the Court prior to the November 7, 1967 general election in Mississippi, Mr. Wells and I have agreed that I will submit a brief on behalf of the plaintiffs within ten days from today and Mr. Wells will submit his brief

on behalf of the defendants within ten days after he receives plaintiffs' brief, all, of course, subject to any different or further direction from the Court.

Both Mr. Wells and myself would welcome the opportunity, if possible, to attend before the Court for the purpose of answering any questions the Court might have, as well as to amplify our written argument.

Respectfully,

ALVIN J. BRONSTEIN
Alvin J. Bronstein

cc: Will S. Wells, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4025

CLIFTON WHITLEY, ET AL., *Plaintiffs*

v.

PAUL B. JOHNSON, Governor of the State of Mississippi, ET AL., *Defendants*

Final Judgment—Filed October 31, 1967

This action having been heard on the merits pursuant to a stipulation entered into by counsel for the parties, and the plaintiffs' motion for an interlocutory injunction having been submitted together with the case on the merits, and the curiam opinion filed in this Court on October 27, 1967, which opinion is incorporated in its entirety herein by reference;

IT IS, ORDERED, ADJUDGED AND DECREED by the Court:

That the plaintiffs' motion for an interlocutory injunction is denied, and the complaint herein in its entirety, be and is hereby, dismissed.

ORDERED, ADJUDGED AND DECREED, this 30th day of October, A.D., 1967.

DAN M. RUSSELL, JR.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 4025

CLIFTON WHITLEY, ET AL., *Plaintiffs*

v.

PAUL B. JOHNSON, Governor of the State of Mississippi, ET AL., *Defendants*

Notice of Appeal to the Supreme Court of the United States—Filed October 31, 1967

1. Notice is hereby given that Rev. Clifton Whitley, Dock Drummond and Emma Sanders, on behalf of themselves and all others similarly situated, the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final judgment denying plaintiffs' motion for an interlocutory injunction and dismissing the complaint entered in this action on October 30, 1967.

2. This appeal is taken pursuant to 28 U.S.C. § 1253.

3. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript, the following:

Complaint

Answer of Defendants

Affidavit of Lawrence Guyot filed as exhibit P-1 on October 26, 1966.

Certified copy of population census of Mississippi, 1950 and 1960, filed as exhibit P-2 on October 26, 1966.

Copy of House Bill #68 filed as exhibit D-2 on October 26, 1966.

Opinion of this three-judge Court dated October 26, 1966 and filed October 26, 1966.

Order granting temporary injunction dated and filed October 27, 1966.

Stipulation dated September 25, 1967 and filed September 25, 1967.

Motion for Interlocutory Injunction and affidavits attached thereto filed on October 13, 1967.

Opinion of this three-judge Court filed October 27, 1967.

Final Judgment dated October 30, 1967 and filed October 31, 1967.

Notice of Appeal and Certificate of Service.

The following questions are presented by this appeal:

a. Did the District Court err:

(i) In finding that House Bill 68, Mississippi Laws 1966, which amended Section 3260 of the Mississippi Code of 1942, does not come within the purview of and is not covered by Section 5 of the Voting Rights Act of 1965 (42 U.S.C. § 1973c) so as to require compliance with said Section 5 by the State of Mississippi prior to enforcing or applying said Section 3260 as amended?

(ii) In not finding that the provision of House Bill 68, Mississippi Laws 1966, amending Section 3260 of the Mississippi Code of 1942, which requires that "each elector shall personally sign" the petition of an independent candidate, violates the Voting Rights Act of 1965 in that it

imposes a requirement for literacy and the ability to read and write which requirements are prohibited by 42 U.S.C. § 1973b (a) and (c)?

(iii) In not finding that the provision of House Bill 68, Mississippi Laws 1966, amending Section 3260 of the Mississippi Code of 1942, which prohibits independent candidates from voting in a primary election violates the privileges and immunities clause of the Fourteenth Amendment to the Constitution of the United States?

(iv) In not finding that the provision of House Bill 68, Mississippi Laws 1966, amending Section 3260 of the Mississippi Code of 1942, which prohibits independent candidates, but not Republican candidates, from voting in the Democratic Primary, violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States?

(v) In denying plaintiffs' motion for an interlocutory injunction and dismissing plaintiffs' complaint?

b. Whether, if the Supreme Court of the United States answers any of the foregoing questions in the affirmative after the November 7, 1967 general election, said Court should order a new election for each of the affected offices pursuant to Section 3260 prior to its amendment in 1966.

Respectfully submitted,

ALVIN J. BRONSTEIN
Alvin J. Bronstein
JAMES A. LEWIS
603 N. Farish Street
Jackson, Mississippi

RICHARD B. SOBOL
606 Common Street
New Orleans, Louisiana

Attorneys for Appellants

[Certificate of Service omitted in printing].

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

Nos. 1058, 1059 and 1174

J. C. FAIRLEY, ET AL., *Appellants*,

v.

JOE T. PATTERSON, ET AL.;

CHARLES E. BUNTON, ET AL., *Appellants*,

v.

JOE T. PATTERSON, ET AL.; and

CLIFTON WHITLEY, ET AL., *Appellants*,

v.

JOHN BELL WILLIAMS, Governor of Mississippi, ET AL.

APPEALS from the United States District Court for the Southern District of Mississippi.

Order Postponing Jurisdiction—June 10, 1968

The statements of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the cases on the merits. The cases are consolidated and a total of two hours is allotted for oral argument.